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8
9 **BEFORE THE**
CALIFORNIA STATE WATER RESOURCES CONTROL BOARD

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12 HEARING IN THE MATTER OF
13 CALIFORNIA DEPARTMENT OF WATER
RESOURCES AND UNITED STATES
14 BUREAU OF RECLAMATION REQUEST
FOR A CHANGE IN POINT OF DIVERSION
15 FOR CALIFORNIA WATERFIX

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**PROTESTANT RESTORE THE DELTA'S
RESPONSE TO THE DEPARTMENT OF
WATER RESOURCES' OBJECTIONS TO
ADMISSION OF PART 2 CROSS
EXAMINATION EXHIBITS**

1 Protestant Restore the Delta (“RTD”) hereby responds to the objections of the Department of
2 Water Resources (“DWR”) to exhibits RTD-1033 and 1035 submitted into evidence by RTD.

3 **ARGUMENT**

4 **A. DWR Failed to Object When RTD Properly Moved the Exhibits at Issue Into Evidence**
5 **at the Close of Its Case-in-Chief**

6 At the conclusion of its case-in-chief for Part 2 of the WaterFix hearing on March 29, 2018,
7 RTD timely moved exhibits RTD-1033 and 1035 into evidence without any objections from DWR
8 or any other party. The exhibits were summarily admitted into evidence by the State Water
9 Resources Control Board (“SWRCB”). Now, after RTD merely resubmitted the exhibits at issue out
10 of an abundance of caution in response to Hearing Officer Dudoc’s April 25, 2018 oral instructions,
11 DWR attempts to lodge a vague and meritless objection.

12 Indeed, RTD understood the SWRCB’s April 25, 2018 oral instructions and later notice
13 (specifying an April 27, 2018 deadline for parties to move cross-examination exhibits into evidence)
14 to mean that such a filing was only necessary if a party had not *already* moved its exhibits into
15 evidence. (SWRCB’s Schedule Notice (Apr. 27, 2018).) Nevertheless, out of an abundance of
16 caution, RTD resubmitted them by the April 27, 2018 deadline. If DWR had any objections to these
17 exhibits, it should have lodged them on March 29, when RTD moved them into evidence. In light of
18 RTD’s resubmission, and given DWR’s clear attempts to lodge an objection it failed to appropriately
19 make before the exhibits were admitted into evidence, DWR’s objection must be overruled.

20 **B. RTD Properly Laid Foundation for RTD-1035**

21 Moreover, and as then noted by Hearing Officer Dudoc, RTD properly laid foundation for
22 RTD-1035 during its cross-examination of Westlands Water District (“WWD”) on March 12, 2018.
23 (SWRCB’s California WaterFix Hearing video (Mar. 12, 2018) from 5:34:10 – 5:35:53
24 <https://www.waterboards.ca.gov/board_info/media/mar2018/calwaterfix_031218.shtml>.)¹ RTD’s
25 Mr. Tim Stroshane introduced RTD-1035 as a table containing State Water Project (“SWP”) and
26 Central Valley Project (“CVP”) South of Delta deliveries for the Kern County Water Agency,
27

28 ¹ RTD cites to the California WaterFix Hearing video available on the SWRCB’s website, as the transcript for March 12, 2018 is unavailable.

1 SWP’s deliveries for San Joaquin Valley contractors, Metropolitan Water District’s (“MWD”)
2 deliveries for Southern California, and WWD’s deliveries compared with total Delta Mendota and
3 San Luis Canal deliveries. Mr. Stroshane further explained that he excluded from the table the
4 exchange contractors’ deliveries, any water pumped to federal storage in the San Luis Reservoir, and
5 refuge water deliveries, all in an attempt to approximate deliveries to San Luis and Delta Mendota
6 water authority member agencies with CVP contracts.² Finally, Mr. Stroshane stated that he obtained
7 the data from the website of the U.S. Bureau of Reclamation (“Reclamation”), which is a petitioner
8 in this proceeding. The descriptive average statistics included at the bottom of the table are simple
9 calculations performed by Mr. Stroshane, as he explained during the cross-examination.

10 Thus, Hearing Officer Dudoc noted that Mr. Stroshane clearly articulated where he obtained
11 the data in RTD-1035 and how he calculated the descriptive averages such that the SWRCB could
12 assume the data was properly obtained and calculated. (WaterFix Hearing video, *supra*, at 5:34:10 –
13 5:35:53.) For the convenience of the SWRCB, attached to this response is a declaration from Mr.
14 Stroshane that describes again the source of the data and calculations. Given that the data in RTD-
15 1035 was obtained from Petitioner Reclamation’s website, and that Mr. Stroshane is a deeply
16 experienced analyst of California’s water policies and management, RTD properly established
17 foundation for this exhibit.

18 **C. RTD-1033 Supplements and Explains Other Evidence in This Proceeding**

19 The WaterFix hearing and its discovery procedures are governed by California Code of
20 Regulations, title 23, section 648 et seq., which incorporates “chapter 4.5 of the Administrative
21 Procedure Act (commencing with section 11400 of the Government Code), sections 801-805 of the
22 Evidence Code, and section 11513 of the Government Code.” (Cal. Code Regs., tit. 23, § 648(b).) As
23 a result, the SWRCB is not required to conduct adjudicative hearings according to the rules of
24 evidence applicable in court proceedings. (Gov. Code, § 11513(c).) In fact, Government Code
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26 ² Mr. Stroshane erred in describing one aspect of the data in RTD-1035 during his March 12, 2018
27 cross-examination, which he corrects in the attached declaration. Mr. Stroshane’s error does not,
28 however, materially alter either the presentation of the delivery data or the calculation of the
descriptive statistics in RTD-1035.

1 section 11513, subdivision (d) allows hearsay evidence in this proceeding “for the purpose of
2 supplementing or explaining other evidence.” That is exactly what RTD-1033 is intended to do.
3 RTD has consistently argued throughout its case in chief for this proceeding that Petitioners lack the
4 support and financing needed for Petition Facilities. RTD-1033 highlights those issues by
5 articulating the concerns of water contractors, specifically WWD, regarding the Petition Facilities.

6 Thus, in addition to ignoring the rules applicable to this proceeding, DWR’s objection fails to
7 provide any detail as to why the exhibit at issue is hearsay, which is reason alone for the SWRCB to
8 overrule it.

9 **CONCLUSION**

10 For these reasons, DWR’s objections to RTD’s exhibits lack merit and should be overruled
11 by the SWRCB.

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13 Respectfully submitted,

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